HIGH C.OURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.1944/2006

CORAM: Hon'ble Shri **S.R.Nayak**, Chief Justice &
Hon'ble Shri ***D.R.Deshmukh***, *J.*

Petitioner	:	R. P. Mondal, Office Superintendent Grade-II, Champa, S/o Shri S.K.Mondal, R/o C/o Shri T.N.Mondal, Kalchuri Vidya Mandir, *Torwa*, BILASPUR *(CG)*.
		Versus
Respondents	: 1.	Union of India, through its General *Manager, South Eastern Central Railway,* BILASPUR.
	: 2.	Divisional Railway Manager, South Eastern *Central Railway*, BILASPUR.
	: 3.	Division Electrical Engineer (East) South Eastern Central Railway, BILASPUR
	: 4.	Sr. Divisional Personnel Officer, South Eastern Central Railway, BILASPUR.

Shri Sanjay K. Agrawal, learned counsel for the petitioner.
Smt. Hamida Siddiqui, learned counsel appears for Shri Amit Chaudhary, Standing Counsel for Railways.

ORAL ORDER
(Passed on 24.07.2006)

The following oral order of the Court was passed by **S.R.NAYAK, C.J.**

At the time of hearing, learned counsel appearing for the respondents raised a preliminary objection with regard to the maintainability of this writ petition under Article 226/227 of the Constitution of India.

2. In this writ petition, the petitioner has sought not only the quashing of the Order of the Central Administrative Tribunal, Jabalpur Bench (C.A.T.) passed in O.A.No.455/2004 (Annexure P/1) but also an Order dated 18.10.2005 (Annexure P/5) passed by Sr. Divisional Engineer

(Central), S.E.C.R., Bilaspur and Order dated 9.11.2005 (Annexure P/6) passed by Sr. Divl. Personnel Officer, S.E.C.R. Bilaspur respectively.

3. Having heard learned counsel for the parties, we find force in the submission of the learned counsel appearing for the respondents that the present writ petition is not maintainable. The petitioner on attaining age of superannuation retired on 31.3.2002 when he was holding the post of Superintendent Grade-II. The petitioner was not paid the Death-cum-Retirement Gratuity (DCRG) amount to Rs.1,73,457/-. The petitioner feeling aggrieved by the said refusal of the Department had initially instituted Original Application No.709/2003 complaining that the Department refused to pay DCRG without assigning any reason and without giving him any opportunity of being heard. The said Original Application was disposed of by the Tribunal directing the respondents to decide the representation of the petitioner within three months. It appears that the Department again rejected the claim of the petitioner by order dated 8.3.20024 without giving any opportunity to the petitioner to have his say in the matter. The petitioner being aggrieved by the said order dated 8.3.2004 again instituted Original Application No.455/2004 before the C.A.T. This application was allowed by the Tribunal by its order dated 17th August 2005 and the impugned order dated 8.3.2004 was quashed on the ground that the said order was made without giving any opportunity of being heard to the petitioner. While doing so, the Tribunal, however, had directed the respondents to take appropriate decision in the matter after affording an opportunity of being heard to the petitioner within a period of three months. After disposal of the above O.A.No.455/2004 on 17th

August 2005, as directed by the Tribunal, Senior Divisional Engineer (Central), S.E.C.R., Bilaspur, the 4th respondent herein, after giving opportunity to the petitioner to have his say in the matter, passed athe order on 18.10.2005 directing thus:

> "Hence, the total amount of recovery from Sri R.P.Mondasl is Rs.2,37,825/- and where as Sri R.P.Mondal's DCRG is only Rs.1,73,457/- and the shortfall amount of Rs.64,368/- may be recovered from Sri R.P.Mondal's pension relief by obtaining sanction of the competent authority."

4. This was followed by the order of Senior Divisional Personnel Officer, S.E.C.Rly. Bilaspur dated 9.11.2005. This writ petition was presented in this Court on 12.04.2006, as already pointed out, not only assailing the validity of the Order of the C.A.T. dated 17th August 2005 in O.A.No.455/2004 but also Annexures P/5 and P/6. It is trite that quashing of Annexures P/5 and P/6 by this Court under Article 226 of the Constitution of India would not arise at this stage. If the petitioner is aggrieved by Annexures P/5 and P/6, he has to work out his legal remedies before the C.A.T. by instituting Original Applications in the first instance. However, it is the contention of the learned counsel for the petitioner that Annexures P/5 and P/6 are consequent to the impugned order of the C.A.T. dated 17th August 2005, and therefore, the writ petition is maintainable. It is true that if the Order made by the C.A.T. in O.A.No.455/2005 could be quashed on any permissible legal ground, the consequential orders Annexures P/5 and P/6 may be regarded as consequential and they would also fall to the ground. We have more than one reason not to entertain this writ petition at this stage. If we may say so, the petitioner has been abusing the process of law by filing this writ petition directly in this Court. In O.A.No.455/2004, as we could see from

paragraph 3 of the judgment, the only contention urged before the C.A.T. was that before the adverse order was made on 8.3.2004 no opportunity of hearing was given to him. Of course, it was also urged that withholding of DCRG is against the settled legal position and is violative of Articles 14 & 16 of the Constitution of India. How the refusal violated the Articles 14 & 16 of the Constitution is not forthcoming from the impugned order. Be that as it may, if the petitioner had urged the ground that the Department had no legal authority to withhold DCRG and that contention was not considered by the Tribunal in its order, the petitioner would have moved an application before the C.A.T. for review and called upon the Tribunal to meet his argument in that regard. The petitioner did not do so. The facts, as laid before this Court, would go to show that the petitioner availed of opportunity, as directed by the Tribunal, to put-forth his case before the Department, and he was sitting on fence till Orders (Annexures P/5 and P/6) were issued. It is noticed that even thereafter, the petitioner did not approach this Court with diligence to assail Annexures P/5 and P/6. Annexure P/6 was issued on 9.11.2005 whereas this writ petition was filed on 12.4.2006 after lapse of nearly 5 months. Not a word of explanation is offered for this delay. The petitioner cannot approbate and reprobate. Having contended before the C.A.T. that an adverse order was made against him without hearing him, and later having availed of opportunity of being heard before the Department, now it is not open for the petitioner to urge the ground which was not urged before the C.A.T. earlier for the decision-making. There is no necessity for us at this stage to decide whether Annexures P/5 and P/6 are justified and legal, in the facts and circumstances of the case and the law applicable to the case. If the Orders at Annexures P/5 and P/6 are not valid and illegal, the petitioner

can work out his legal remedies by instituting Original Application before the Tribunal. That liberty is reserved. Subject to the above liberty, this writ petition is dismissed. No costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge

Anjani